

Message Text

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PAGE 01 ROME 09614 01 OF 02 141311Z

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ACTION IO-14

INFO OCT-01 EUR-25 NEA-10 ISO-00 CAB-09 CIAE-00 COME-00

DODE-00 EB-11 INR-10 NSAE-00 RSC-01 FAA-00 IOE-00

AF-10 ARA-16 EA-11 SY-10 USSS-00 A-01 USIE-00 PM-07

H-03 L-03 NSC-10 PA-03 PRS-01 SPC-03 SS-15 ACDA-19

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FM AMEMBASSY ROME

TO SECSTATE WASHDC IMMEDIATE NIACT 0755

INFO AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

AMEMBASSY TEL AVIV

AMCONSUL MONTREAL

USUN NEW YORK 1701

UNCLAS SECTION 1 OF 2 ROME 9614

E.O. 11652: N/A

TAGS: ICAO, ETRN

SUBJECT: ICAO AIR SECURITY CONFERENCE: ARTICLE 87

MONTREAL FOR US REP ICAO

PLS PASS: LITTELL/CAB; DRISCOLL/DOT; STEWART/FAA

1. FOLLOWING TEXT SUBMITTED IN LIEU OF ORIGINAL UK/SWISS
AMENDMENT TO ARTICLE 87. REQUEST FOR GUIDANCE AND
COMMENTS BEING SENT SEPTTEL:

BEGIN TEXT

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PAGE 02 ROME 09614 01 OF 02 141311Z

REVISED TEXT OF THE PROPOSAL OF THE DELEGATION

OF SWITZERLAND AND THE UNITED KINGDOM

ARTICLE 88 (FOOTNOTE 1)

PENALTY FOR NON-CONFORMITY BY STATE

(A) EACH CONTRACTING STATE UNDERTAKES NOT TO ALLOW THE OPERATION OF THE AIR CARRIERS (FT.2) OF A CONTRACTING STATE THROUGH THE AIRSPACE ABOVE ITS TERRITORY IF THE COUNCIL (FT.3) HAS DECIDED TO THIS EFFECT. BEFORE TAKING SUCH A DECISION (FT. 4), THE COUNCIL SHALL FIRST HAVE DECIDED IN ACCORDANCE WITH ARTICLE 84 (FT. 5) THAT THE CONTRACTING STATE CONCERNED IS NOT ACTING IN CONFORMITY WITH THE PROVISIONS OF CHAPTER....(FT. 6).

(B) THE COUNCIL MAY AT ANY TIME, AND TAKING INTO ACCOUNT THE PREVAILING CIRCUMSTANCES, SUSPEND, MODIFY (FT.7) OR REVOKE (FT.8) ANY DECISION TAKEN BY IT UNDER THE PRECEDING PARAGRAPH (FT. 9).

(C) THE ASSEMBLY SHALL SUSPEND THE VOTING POWER IN THE ASSEMBLY AND IN THE COUNCIL OF ANY CONTRACTING STATE THAT IS FOUND IN DEFAULT UNDER THE PROVISIONS OF THIS CHAPTER OTHER THAN SUBPARAGRAPH (A) (FT.10).

(D) THE COUNCIL SHALL DETERMINE IN WHAT MANNER THE PROVISIONS OF THIS ARTICLE SHALL APPLY TO AIR CARRIERS WHICH ARE INTERNATIONAL OPERATING AGENCIES (FT.11).

(E) FOR THE PURPOSES OF THIS ARTICLE "AIR CARRIER" MEANS A CARRIER ENGAGED IN THE CARRIAGE BY AIR OF PASSENGERS, CARGO OR MAIL FOR REMUNERATION OR HIRE ON SCHEDULED OR NON-SCHEDULED SERVICES (FT.12).

BEGIN FOOTNOTES

1. THE DRAFTING COMMITTEE IS INVITED TO CONSIDER WHETHER THESE PROVISIONS SHOULD CONSTITUTE ARTICLE 88, RETAINING ARTICLE 87 IN ITS PRESENT FORM. ALTERNATIVELY THE DRAFTING COMMITTEE MIGHT PREFER TO INCORPORATE THIS TEXT AS AN AMENDMENT TO ARTICLE 87.

UNCLASSIFIED

UNCLASSIFIED

PAGE 03 ROME 09614 01 OF 02 141311Z

2. THE PROPOSAL REFERS TO "AIR CARRIERS" (DEFINED IN SUBPARAGRAPH (E) BELOW) BECAUSE A REFERENCE TO "AIRCRAFT" GIVES RISE TO INJUSTICE WHEN AN AIRCRAFT REGISTERED IN ONE STATE IS OPERATED BY AN AIR CARRIER BELONGING TO ANOTHER STATE. IT COULD EQUALLY GIVE RISE TO A POSSIBILITY OF EVASION BY CHANGING THE REGISTRY OF AN AIRCRAFT. "AIRLINE" WOULD NOT SUFFICE BECAUSE, IN VIEW OF THE DEFINITION IN ARTICLE 96,

THAT EXPRESSION DOES NOT INCLUDE A NON-SCHEDULED CARRIER.

3. THE CO-SPONSORS PREFER THE COUNCIL TO MAKE THESE DECISIONS, THOUGH THEY APPRECIATE THAT OTHER DELEGATIONS MAY WISH TO GIVE SOME FUNCTIONS TO THE ASSEMBLY IN THIS MATTER. THIS IS A QUESTION FOR DECISION BY THE EXECUTIVE COMMITTEE.

4. THE WORDS "BEFORE TAKING SUCH A DECISION" ARE INTENDED TO AVOID AUTOMATICITY BY ENSURING THAT THE COUNCIL ACTS IN TWO STAGES. FIRST IT MUST DETERMINE WHETHER THERE IS A DEFAULT AND THEN IT MUST DECIDE WHETHER OR NOT TO IMPOSE THE SANCTION.

5. THE CO-SPONSORS APPRECIATE THAT THE COUNCIL COULD CONSIDER THE MATTER UNDER ARTICLE 54 OR 55, BUT IN THE VIEW OF THE CO-SPONSORS IT IS DESIRABLE TO APPLY A SANCTION ONLY AFTER THE JUDICIAL PROCEDURES OF CHAPTER XVIII HAVE BEEN APPLIED. THE COUNCIL CAN, UNDER ITS EXISTING RULES FOR THE SETTLEMENT OF DIFFERENCES ENTRUST THE MATTER TO A COMMISSION OR OTHER BODY OF EXPERTS, BUT IF THE EXECUTIVE COMMITTEE WISHES TO REQUIRE THE COUNCIL TO DO SO A CHANGE IN THIS TEXT COULD BE INSERTED TO THAT EFFECT BY THE DRAFTING COMMITTEE. IT MIGHT ALSO BE POSSIBLE FOR THE EXISTING RULES OF THE COUNCIL FOR THE SETTLEMENT OF DIFFERENCES TO BE EXAMINED WITH A VIEW TO SPEEDING UP THE DECISION OF MATTERS SUCH AS THESE.

6. HERE WOULD BE INSERTED THE NUMBER OF THE NEW CHAPTER ENTITLED "MEASURES TO SECURE THE SAFETY OF INTERNATIONAL CIVIL AVIATION".

7. THE POWER OF MODIFICATION WOULD ENABLE THE COUNCIL TO TAKE ACCOUNT OF PREVAILING CIRCUMSTANCES, SUCH AS THE NECESSITY TO ALLOW THE AIR CARRIER TO OPERATE IN ORDER TO UNCLASSIFIED

UNCLASSIFIED

PAGE 04 ROME 09614 01 OF 02 141311Z

DEAL WITH SOME NATURAL CATASTROPHE, OR TO TAKE ACCOUNT OF THE SPECIAL SITUATION OF AIR CARRIERS WHICH ARE INTERNATIONAL OPERATING AGENCIES (SEE PARAGRAPH (D) BELOW).

8. A DECISION OF THE COUNCIL WHICH WAS REVERSED ON APPEAL WOULD OF COURSE CEASE TO HAVE EFFECT. THE QUESTION OF AMENDING ARTICLE 86 IS A SEPARATE QUESTION WHICH IS NOT DEALT WITH IN THIS PAPER.

9. IT IS NOT THE INTENTION THAT THE COUNCIL SHOULD MODIFY ITS DECISION IN SUCH A WAY AS TO DISCRIMINATE BETWEEN AIRLINES BELONGING TO THE SAME STATE.

10. SUBPARAGRAPH (C) REPEATS THE WORDING OF THE EXISTING ARTICLE 88, WITH THE ADDITION OF A QUALIFICATION TO EXCLUDE

SECONDARY SANCTIONS. IF PARAGRAPH (C) OF THE REVISED TEXT
IS ACCEPTED THE EXISTING ARTICLE 88 WOULD BE DELETED.

1. SUBPARAGRAPH (D) FOLLOWS CLOSELY THE WORDING
OF THE LAST SENTENCE OF THE EXISTING ARTICLE 77 OF THE
CHICAGO CONVENTION. IT IS ALSO INTENDED TO PROPOSE A
RESOLUTION OF THE ASSEMBLY CALLING UPON THE COUNCIL TO
STUDY AS SOON AS POSSIBLE THE QUESTION OF THE APPLICATION
OF THE AMENDMENTS TO INTERNATIONAL OPERATING AGENCIES. THIS
STUDY SHOULD BEGIN IMMEDIATELY WITHOUT WAITING FOR THE
AMENDMENTS TO THE CHICAGO CONVENTION TO COME INTO FORCE.
IN THAT WAY THE STATES CONCERNED WILL NOTE THE RESULTS OF THE
COUNCIL'S STUDY BEFORE THEY RATIFY THE AMENDMENTS.
(MORE COMING).VOLPE

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PAGE 01 ROME 09614 02 OF 02 141318Z

42

ACTION IO-14

INFO OCT-01 EUR-25 NEA-10 ISO-00 IOE-00 AF-10 ARA-16 EA-11

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O R 141205Z SEP 73

FM AMEMBASSY ROME

TO SECSTATE WASHDC IMMEDIATE NIACT 0756

INFO AMEMBASSY LONDON

AMEMBASSY MOSCOW

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UNCLAS SECTION 2 OF 2 ROME 9614

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12. THIS SUBPARAGRAPH COULD, AT THE DISCRETION OF THE DRAFTING COMMITTEE, BE TRANSFERRED TO ARTICLE 96 WITH MINOR TECHNICAL CHANGES IN THE WORDING. THE REFERENCE TO CARRIAGE "FOR REMUNERATION OR HIRE" IS TAKEN FROM ARTICLE 5 OF THE CHICAGO CONVENTION, AND THE DEFINITION MAKES CLEAR THAT NON-SCHEDULED AS WELL AS SCHEDULED SERVICES ARE INCLUDED. THE DRAFTING COMMITTEE WILL ALSO WISH TO CONSIDER WHETHER IN VIEW OF THE NEW FUNCTIONS UNCLASSIFIED

UNCLASSIFIED

PAGE 02 ROME 09614 02 OF 02 141318Z

CONFERRED ON THE COUNCIL IT IS DESIRABLE ON TECHNICAL DRAFTING GROUNDS TO MAKE CONSEQUENTIAL REFERENCES IN ARTICLES 54 AND 55 OF THE CONVENTION. END FOOTNOTES.

END TEXT.

2. FOLLOWING IS PROPOSAL OF QATAR IN LIEU OF UK/SWISS REVISION:

BEGIN TEXT

ARTICLE 88

PENALTY FOR NON-CONFORMITY BY STATE

(A) EACH CONTRACTING STATE UNDERTAKES NOT TO ALLOW THE OPERATION OF THE AIR CARRIERS OF A CONTRACTING STATE THROUGH THE AIRSPACE ABOVE ITS TERRITORY IF THE ASSEMBLY BY A TWO-THIRDS MAJORITY VOTE, ACTING ON THE RECOMMENDATION OF THE COUNCIL, HAS DECIDED TO THIS EFFECT. BEFORE MAKING SUCH A RECOMMENDATION, THE COUNCIL SHALL FIRST HAVE DECIDED IN ACCORDANCE WITH ARTICLE 84 THAT THE CONTRACTING STATE CONCERNED IS NOT ACTING IN CONFORMITY WITH THE PROVISIONS OF ...(FOOTNOTE 1).

(B) THE ASSEMBLY MAY AT ANY TIME, AND TAKING INTO ACCOUNT THE PREVAILING CIRCUMSTANCES, SUSPEND, MODIFY OR REVOKE ANY DECISION TAKEN BY IT UNDER THE PRECEDING PRAGRAPH.

(C) THE ASSEMBLY SHALL SUSPEND THE VOTING POWER IN THE ASSEMBLY AND IN THE COUNCIL OF ANY CONTRACTING STATE THAT IS FOUND IN DEFAULT UNDER PROVISIONS OF THIS CHAPTER OTHER THAN SUBPARAGRAPH (A).

(D) THE COUNCIL SHALL DETERMINE IN WHAT MANNER THE PROVISIONS OF THIS ARTICLE SHALL APPLY TO AIR CARRIERS WHICH ARE INTERNATIONAL OPERATING AGENCIES.

(E) FOR THE PURPOSES OF THIS ARTICLE "AIR CARRIER" MEANS A CARRIER ENGAGED IN THE CARRIAGE BY AIR OF PASSENGERS, CARGO OR MAIL FOR REMUNERATION OR HIRE ON SCHEDULED OR UNCLASSIFIED

UNCLASSIFIED

PAGE 03 ROME 09614 02 OF 02 141318Z

NON-SCHEDULED SERVICES.

(F) ANY CONTRACTING STATE EFFECTED BY THE DECISION OF THE ASSEMBLY UNDER PARA (A) MAY APPEAL AGAINST SUCH DECISION TO THE INTERNATIONAL COURT OF JUSTICE.

(G) THE DECISION OF THE ASSEMBLY, IF APPEALED FROM, SHALL BE SUSPENDED UNLESS THE ASSEMBLY DECIDES OTHERWISE.

FOOTNOTE 1

HERE WOULD BE INSERTED THE NUMBER OF THE NEW CHAPTER ENTITLED "MEASURES TO SECURE THE SAFETY OF INTERNATIONAL CIVIL AVIATION".

END TEXT.VOLPE

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